

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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MAR 29 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 99-36
Table of Allotments) RM-9372
FM Broadcast Station)
(Denmark and Kaukauna, Wisconsin))

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

COMMENTS IN SUPPORT OF NOTICE OF PROPOSED RULEMAKING

Midwest Dimensions, Inc. ("Midwest"), licensee of FM radio broadcast station WPCCK, Kaukauna, Wisconsin ("WPCCK"), by its attorneys, hereby comments on the Commission's Notice of Proposed Rule Making ("Notice") to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, by substituting Channel 285C3 for Channel 285A in Kaukauna, Wisconsin, and reallocating Channel 285C3 from Kaukauna to Denmark, Wisconsin.

PRELIMINARY STATEMENT

Midwest filed a Petition for Rulemaking ("Petition") on June 19, 1998, requesting that the Commission amend its FM Table of Allotments to substitute Channel 285A for Channel 285C3 at Kaukauna, Wisconsin, to reallocate Channel 285C3 from Kaukauna to Denmark, Wisconsin as that community's first local service, and to modify WPCCK's license accordingly. On February 5, 1999, the Commission released its Notice of Proposed Rulemaking, MM Docket No. 99-36, RM-9372 ("NPRM") in the above-referenced matter, proposing to amend the FM

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List A B C D E

Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

| <u>City</u> | <u>Channel No.</u> | |
|---------------------|--------------------|-----------------|
| | <u>Present</u> | <u>Proposed</u> |
| Denmark, Wisconsin | -- | 285C3 |
| Kaukauna, Wisconsin | 285A, 276C3 | 276C3 |

The Commission noted that reallocating Channel 285C3 to Denmark would provide that community with its first local aural transmission service, and that WPCCK could be reallocated to Denmark in full compliance with the Commission's distance separation and technical requirements.

In the NPRM, however, the Commission requested that Midwest provide additional information pursuant to its proposal. First, because Midwest proposed a change in the transmitter site for WPCCK, the Commission requested a showing as to the gain and loss areas that would result from the relocation of WPCCK. Second, Midwest was asked to provide information concerning the local services that would remain in Kaukauna to serve the needs of the community. Third, the Commission noted that if WPCCK were relocated to Denmark, the station's signal would place a city grade, 70 dBu signal over 50% or more of the Green Bay Urbanized Area. Therefore, the Commission requested a Tuck analysis to determine whether Denmark is sufficiently independent of Green Bay to warrant a first local service preference, or whether it should be credited with all of the authorized services in the Green Bay Urbanized Area. See Huntington Broadcasting Co. v. FCC, 192 F. 2d 33 (D.C. Cir. 1951); Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995); Faye and Richard Tuck, 3 FCC Rcd 5374 (1988) ("Tuck"). Fourth, the Commission asked Midwest to set forth the overall public interest benefits that would result from the proposed reallocation. See NPRM at ¶¶ 3-4.

As shown below, while the reallocation of WPCCK to Denmark will create both gain and loss areas, any loss areas will not be underserved, as they will continue to be served by at least five or more full-time aural services. Further, Denmark is a wholly independent community, with its own governing body, municipal entities, and commercial businesses. Therefore, the Commission should amend the FM Table of Allotments to allot Channel 285C3 from Kaukauna to Denmark, Wisconsin, and should modify WPCCK's license accordingly.

ARGUMENT

I. Midwest Reiterates its Declaration of Intent

As Midwest noted in its Petition, if the proposal to substitute Channel 285A for 285C3 in Kaukauna, Wisconsin, and to then reallocate Channel 285C3 from Kaukauna to Denmark, Wisconsin, is granted, Midwest will promptly file the appropriate application for Channel 285C3 at Denmark, Wisconsin. Further, if the Commission so authorizes, Midwest will promptly construct the WPCCK facilities contemplated therein.

II. The Reallotment of WPCCK Will not Result in any Areas being Underserved

Because a change in the transmitter site is being proposed, attached hereto as Exhibit 1 is an analysis of the gain and loss areas that would result from the WPCCK transmitter relocation. See Homestead and North Miami Beach, Florida, 10 FCC Rcd 13,149 (1995). As shown, while there are loss areas that will be created as a result of this proposed reallotment, these areas will continue to be well served by at least five or more full-time reception services. See Macon, Hampton and Roswell, Georgia, DA 98-1942, MM Docket No. 98-18 (released September 25, 1998) (granting a relocation of a station even though 455,266 people would lose service from the proposed reallotment, holding that the area would continue to be well-served as a majority of those people would continue to receive 5 or more reception services); Arcadia and Fort Meade,

Florida, DA 98-287, MM Docket No. 97-159 (released February 20, 1998) (granting the reallocation of a station even though loss areas existed, because the loss areas were well served by five or more reception services). As shown in Exhibit 2 attached hereto, there are at least 7 stations that will continue to provide coverage to the loss areas. Therefore, Midwest's proposal is wholly consistent with Commission precedent.

III. Kaukauna Will Continue to be Well-Served By Existing Local Stations

Relocating WPCN to Denmark satisfies the Commission's first priority for FM allocations as it would provide a first local service to Denmark. At the same time, however, Kaukauna will not be deprived of its only existing service, as two stations, WSGC(AM) and WOBG(FM), remain licensed to Kaukauna. Therefore, because Kaukauna will continue to maintain two local transmission services, this proposed reallocation is in full compliance with the Commission's rules.

IV. Denmark is a Community Wholly Independent from the Green Bay Urbanized Area

When an applicant proposes an allocation to a community for its first local service preference, and the 70 dBu contour of the station covers 50% or more of an Urbanized Area, a presumption of interdependence is created. See Tuck, 3 FCC Rcd 5374. The Census Bureau defines an Urbanized Area as consisting of a central community and adjacent densely settled areas that together have a minimum 50,000 persons. If the presumption of interdependence is not rebutted, the community is credited with all local transmission services licensed to communities within the Urbanized Area. Id.

Under Tuck, the Commission looks at the following three factors in determining whether an applicant rebuts a presumption of interdependence, and whether the community deserves a first local service preference by relying on three factors: (1) signal population coverage; (2) size

and proximity of the suburban community relative to the adjacent community; and (3) the interdependence of the suburban community with the central city. See Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). As set forth below, an analysis of the factors in this case will rebut the presumption of interdependence, as any coverage over Green Bay is incidental to the coverage of a much broader service area.

A. Tuck Factor Number 1: Signal Coverage of WPCCK over the Green Bay Urbanized Area

As shown on the coverage map of the proposed contour of WPCCK, see Exhibit 1, the coverage over Green Bay is incidental to the entirety of the coverage provided by the station. In addition, Denmark, which is not within the Green Bay Urbanized Area, is separated from Green Bay by approximately 16 miles, a distance the Commission has considered indicative of independence when combined with other showings under the Tuck analysis. See Slidell and Kenner, Louisiana, DA 97-589, MM Docket No. 97-102 (released March 28, 1997) (holding that the proposed community was independent of the Urbanized Area even though it was only 10 miles away); Littlefield, Wolfforth and Tahoka, Texas, DA 97-549, MM Docket no. 95-83 (released March 21, 1997) (holding that the proposed community was sufficiently independent from the Urbanized Area even though it was only separated by 5 miles). Further, there is some dispute as to whether WPCCK would indeed cover 50% or more of the Green Bay Urbanized Area, see Exhibit 1. Assuming, however, the Commission's technical analysis is correct, the mere fact that WPCCK would provide coverage to over 50% of the Urbanized Area with its signal does not mean it is just another Green Bay station.

B. Tuck Factor Number 2: Size and Proximity of Denmark to Green Bay

There are 96,646 people living in Green Bay, and 1,612 people living in Denmark. However, as shown in Section C, infra, Denmark possesses a number of community attributes

that provide convincing evidence of its independence from Green Bay. As set forth above, the distance to Green Bay is greater than that approved by the Commission in other similar reallocation cases.

C. Tuck Factor Number 3: Interdependence Between Community and Columbus

The Commission has consistently held that the degree of interdependence between the proposed community and the centralized city in the Urbanized Area is the most important factor in a Tuck analysis. See, e.g., Farmington, California, 11 FCC Rcd 8117 (1996). As shown below, Denmark is deserving of a first local service preference, as it is a wholly independent community, and therefore would greatly benefit from its own local source of media expression.

The Commission breaks down its interdependence analysis into the following characteristics:

1. The extent to which community residents work in the larger metropolitan area, rather than the specified community;

Denmark is home to a number of local businesses, including banks, restaurants, and other commercial establishments. The three largest employers in the community are the school district, the factory for Land O'Lakes, Inc., and a printing plant that prints various weekly newspapers for various surrounding communities. Attached hereto as Exhibit 3 is a miscellaneous list of the various businesses and companies located in Denmark. As shown, there are a number of businesses in Denmark at which the residents work.

2. Whether the smaller community has its own newspaper or other media that covers the community's local needs and interests;

Denmark has its own weekly newspaper, The Denmark Press, which points to the independent status of the community. Attached hereto are letters from various community leaders and business owners in Denmark expressing their desire to have a local radio station in

Denmark. See Letter of Helen Mleziva, Clerk-Treasurer of the Village of Denmark, attached hereto as Exhibit 4; Letter of Darrell R. Lemmens, President of Denmark State Bank, attached hereto as Exhibit 5; Letter of Jeff Vandenplas, Assistant Vice President of M&I Bank Northeast, attached hereto as Exhibit 6; Letter of Steven Rukamp, Production Superintendent at Land O'Lakes, Inc., attached hereto as Exhibit 7; Letter of Lorrie and Jim Steffek, co-owners of Lorrie's Home Town Cafe and Catering, attached hereto as Exhibit 8; and Letter of LeRoy Meles, Principal of Denmark High School, attached hereto as Exhibit 9. These numerous requests for a station in Denmark indicate a strong need for a local service in the community. The station would help keep the community informed of items of local importance, and would further the community's continued growth.

3. Whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area;

As indicated in the above-referenced letters, there is a prevailing sentiment among business owners and the governing body of Denmark that it is a unique independent community, with its own local interests and economic base. Attached hereto as Exhibit 10 is a copy of a brochure published by the Denmark Community Business Association, which highlights the unique local aspects of Denmark. A Danish Fall Festival is held every year, incorporating the history of the area as well as the cultural Danish traditions that continue to be promoted. The Denmark Lions Club puts on a festival every 4th weekend in July, including numerous activities for the residents. There is a Denmark Historical Museum which includes collections of artifacts donated by local residents and from Denmark's forefathers. Attached hereto as Exhibit 11 are a number of photographs of the Denmark, which show it is a self-sufficient community. These

activities and pictures provide compelling proof that Denmark is its own separate community, and not part of the Green Bay market.

4. whether the specified community has its own local government and elected officials;

Denmark is an incorporated community that has its own village government. This governing body consists of a president and six trustees, which serve two year terms. There are seven standing village committees, which are as follows: Public Works; Parks and Recreation; Police; Water Utility; Sewer Utility; Finance and Personnel; and Industrial Development and Improvement.

5. Whether the smaller community has its own telephone book provided by the local telephone company or zip code;

Denmark does have its own zip code ("54208"), United States Post Office branch, a local exchange prefix ("863") and a telephone directory.

6. Whether the community has its own commercial establishments, health facilities, and transportation systems;

As previously noted in the Petition, Denmark has its own police department, volunteer fire department, water system and a medical clinic. In addition, there are a number of industries and commercial businesses located within the community, including a library, restaurants, grocery stores, and banks. See Exhibit 3. Denmark also has its own community center, senior citizen's center, a retirement home, and two public parks. Numerous civic organizations also are located within Denmark, including the American Legion, Lions Club, Future Farmers of America, Denmark Community Business Association, Girl Scouts and the Veterans of Foreign Wars ("VFW").

7. The extent to which the specified community and the central city are part of the same advertising market;

Although Midwest was unable to obtain any data on the advertising market, the fact that Denmark has its own newspaper, which contains advertisements for local businesses, is strong evidence that the community is independent from the Green Bay market.

8. The extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries

As shown in Factor 6 above, Denmark provides for a number of services directly to the community. There is a public elementary, middle and high school in Denmark, and the community is also the principal member of the Denmark Unified School District. There are a number of churches in the community as well. Thus, there is no need to rely on the Green Bay Urbanized Area for these services.

A majority of these Tuck factors point to Denmark being independent from the Green Bay Urbanized Area. Therefore, based on this determination, Denmark is wholly deserving of a first local service preference.

V. The Relocation of WPCCK to Denmark Would Properly Serve the Public Interest

Midwest has used WPCCK in Kaukauna to promote many fund-raising activities for local organizations, including the March of Dimes and the Make-A-Wish Foundation, and also sponsors Green Bay Packers players coming to the community to meet local youth. Midwest intends to continue this people-oriented approach in Denmark, and will actively work with the Denmark community to create programming that addresses important local issues.

Also, as shown in Section C, supra, there is a strong desire among various people in Denmark to have a local broadcast service which would serve as a focal point for the area,


informing the public of news, weather, and community events. Because of all these public interest benefits WPKC would provide to Denmark if it were so allotted, Midwest's Petition should promptly be granted.

CONCLUSION

For the foregoing reasons, Midwest Dimensions, Inc. respectfully requests that the Commission substitute Channel 285C3 for Channel 285A at Kaukauna, Wisconsin, and reallocate Channel 285C3 from Kaukauna to Denmark, Wisconsin and modify the license of radio station WPKC(FM) accordingly.

Respectfully submitted,

MIDWEST DIMENSIONS, INC.

By: 
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Its Attorneys

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Dated: March 29, 1999

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Midwest Dimensions, Inc.

EXHIBIT 1

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20054

IN THE MATTER OF:) MM DOCKET NO: 99-36
AMENDMENT OF SECTION 73.202(B),) RM-9372
TABLE OF ASSIGNMENTS,)
F.M. BROADCAST STATIONS;)
(DENMARK & KAUKAUNA, WISCONSIN))

ENGINEERING STATEMENT

This Engineering Statement constitutes a response to Paragraph 4, of an FCC Notice Of Proposed Rule Making, in Mass Media Docket Number 99-36; RM-9372, Released February 05, 1999.

Midwest Dimensions, Inc., the Proponent, retained the services of Lyle Robert Evans, Technical Consultant, to conduct engineering studies and prepare necessary Statements and Attachments to support the comments of Midwest Dimensions, Inc.

DISCUSSION

The geographic coordinates for the antenna/tower specified by the Proponent are as follows:

44°-24'-38" North Latitude
87°-34'-20" West Longitude

At the proposed location the 70 dBu, F(50,50)

RESPONSE TO NOTICE OF PROPOSED RULEMAKING
AMENDMENT OF 47 C.F.R. §73.202(b); TABLE OF ALLOTMENTS
FM CHANNEL 285C3; 104.9 MHz.
RESPONDANT: MIDWEST DIMENSIONS, INC.

Principal Community Service Contour extends approximately twenty (20) kilometers, and the 60 dBu, F(50,50) Service Contour approximately thirty-four (34) kilometers, toward the Green Bay Urbanized Area. Contours are calculated in accord with 47 C.F.R. Section 73.313.

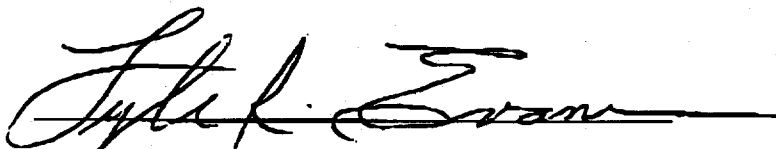
Exhibit E-1 displays the predicted 70 dBu and 60 dBu contours. As evidenced by review, the predicted 70 dBu F(50,50) Principal Community Service Contour falls well short of overlapping any of the urbanized area of Green Bay.

CONCLUSION

The most recent applicable FCC Rules and Regulations have been used in the preparation of this Engineering Statement.

It is believed to conform to the Commission's Technical Standards.

Respectfully,



Lyle R. Evans,
Technical Consultant to:
Midwest Dimensions, Inc.

March 26, 1999



**PROPOSED
F(50,50)
70.0 DBU
PRINCIPAL
COMMUNITY
SERVICE
CONTOUR**

**PROPOSED
SITE**

**CURRENT
F(50,50)
70.0 DBU
PRINCIPAL
COMMUNITY
SERVICE
CONTOUR**

Scale 1:250,000

20 Statute Miles

30 Kilometers

15 Nautical Miles